

City of Cedar Falls/Cedar Falls Firefighters Local 1366

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PUBLIC EMPLOYMENT
RELATIONS BOARD

AWARD

In the Matter of:

City of Cedar Falls
Public Employer

and

Cedar Falls Firefighters Local 1366
Public Employee Organization

Micheal L. Thompson

Arbitrator

2006-2007
CEO: 119
SECTOR: 2

Appearances:

For the Employer:

Susan Bernau Staudt, City Attorney
Jenifer Rodenbeck, City Finance Manager
Barry Haskins, City Personnel Specialist

For the Public Employee Organization:

Scott Dix, president Local 1366
Rick Sharp, Vice President Local 1366
Paul Schaefer, Secretary/Treasurer Local 1366

STATEMENT OF JURISDICTION

The matter proceeds to an arbitration hearing pursuant to the statutory provisions established in the Public Employment Relations Act, Chapter 20, Code of Iowa. The above named arbitrator was selected from a list furnished to the parties by the Public Employment Relations Board. An interest arbitration hearing was held on April 2, 2007 at 9:00 am at Cedar Falls, Iowa. The hearing was electronically recorded. At the hearing the parties (City of Cedar Falls hereinafter Employer and Cedar Falls Firefighters Local 1366 hereinafter Association) were given the full opportunity to introduce evidence, facts, and arguments in support of their respective positions. Upon the basis of the evidence, facts, and arguments presented, the following award was made

STATEMENT OF THE ISSUES and POSITIONS OF THE PARTIES

For the Employer:

Wages

Firefighters, Fire Lieutenants and Minimum Rental Housing Inspector

The city proposes a 2.80% across the board increase to wages for Fire Bargaining Unit employees, F-1 Firefighters, F-2 Fire Lieutenant, and PT-1 Minimum rental housing Inspector, effective June 30, 2007 through June 27, 2008

Paid on Call employees (city employees):

The City proposes to pay the Paid On Call Firefighters (current city employees from other departments who provide a minimum of 192 hours per year in extra hours for fire duties and who are available a minimum of 40 hours per week during their regular city hours) according to the following schedule:

Employees who complete and maintain their cross training certification(s) will receive premium pay equal to 13.85% of their regular base salary for the 192 hours per year (16 hours per month X 12 months) spent on reserve paid on call firefighter duties. Exempt employees shall receive \$6,000 annually; non-exempt employees shall receive premium pay equal to 13.85% of their regular base pay salary or \$6,000 annually, whichever is less.

The regular base salary plus the 13.85% premium pay (up to an annual maximum of \$6000) will be paid over 26 pay periods.

Employees who begin training to receive certification shall immediately receive their applicable overtime pay, or premium pay, dependent upon their exempt status pursuant to the Fair Labor Standards Act.

Citizen Volunteer Firefighters (non-city employees)

The City proposes to pay the regular citizen volunteer Firefighters (non-city employees who provide a minimum of 192 hours per year for fire duties but are not otherwise guaranteed to be available a minimum of 40 hours per week during the regular work hours for another employer):

1st year*	\$1,000
2nd year*	\$1,150
3rd year	\$1,300
4th year	\$1,450
5th year	\$1,600
6th year	\$1,750
7th year	\$1,900
8th year	\$2,050
9th year	\$2,200
10th year	\$2,350
11th year (Max)	\$2,500

- Paid together after completion of 2nd year

Health Insurance

Dependent Care coverage: For FY 2008, the city proposes to increase the employee's monthly contribution for dependent care coverage to 4.65% of the total monthly health insurance contribution for dependent care coverage for FY 2008, which is a monthly employee contribution of \$57.60 per month.

Single coverage: The City opposes any change in single coverage.

Cedar Falls Firefighters Local 1366
Final Offer for Arbitration

Wages:

Full time firefighters: 1% increase for Steps A,B,C,D

Step E would get the remainder of funds available from a pool equivalent to a 3.5% across the board for Full time Firefighters, Lieutenants, and Part-time Inspector. We recalculated this at a 4.95% increase. If the City has a more accurate figure we would welcome that.

Lieutenant: 3.0% increase across the board

Part-time Inspector: 1% increase

Part-time Firefighters: \$7.97 per hour to be paid bi-weekly to all classified as Part-time firefighters by PERB ruling case #7235.

Insurance:

No change in coverage or premiums from current contract. (Same as Fact-finder's Recommendation)

Fact-finder Recommendation

There should be no increase in family premium formula.

There should be no change in single coverage.

By agreement no wage proposal was presented to the fact-finder.

CRITERIA APPLIED IN MAKING AWARDS

The Iowa Public Employment Relations Act contains criteria that are to be used by an arbitrator in judging the reasonableness of the parties' collective bargaining proposals. The Act establishes the criteria that are to be used by interest arbitrators in formulating their awards. Section 22.9 of the Act provides, in relevant part:

The panel of arbitrators shall consider, in addition to any other relevant factors, the following factors:

- a. Past collective bargaining contracts between the parties including the bargaining that led up to such contracts.
- b. Comparison of wages, hours, and conditions of employment of the involved public employees with those of other public employees doing comparable work, giving consideration to factors peculiar to the area and the classifications involved.
- c. The interests and welfare of the public, the ability of the public employer to finance economic adjustments and the effects of such adjustments on the normal standard of service.
- d. The power of the public employer to levy taxes and appropriate funds for the conduct of its operations.

With the criteria mandated for arbitrators firmly in mind and based upon the entire record developed at the hearing, the award contained in this report is formulated

Background

Cedar Falls is located in the northeastern part of the state, and it is an urban area that is contingent to Waterloo. Cedar Falls is a growing community of 36,000 that includes the University of Northern Iowa. The Fire Department has a staff of 34 fulltime staff and nineteen part-time firefighters. The parties have engaged in collective bargaining for a lengthy period of time (since 1975), and the city has other unions/associations that it negotiates with as well -- Police, Parks and Public Works. The bargaining relationship has been acrimonious at times, and the impasse procedures have been utilized. The current contract is for the year that begins July 1, 2006 and ends on June 29, 2007. The parties have been unable to resolve the preceding issues. The Employer and Association have spent considerable time in bargaining and negotiations, including the intervention of a mediator to voluntarily resolve the issues. This effort was unsuccessful and the impasse proceeded to a fact-finding hearing, which culminated in the instant arbitration. Both the Association and Employer also filed petitions with PERB regarding the composition of the firefighters' association and many of the issues arose during the arbitration. The wages issue appears to be a subset of the composition concerns, as each party has dramatically different methods of paying part-time firefighters.

The Association and Employer presented evidence and each asserted their respective positions. The impasse appears to have generated intense feelings for both groups. The subscribed arbitrator has reviewed and considered, at length, the arguments, records, and evidence presented and has carefully considered each point raised by the

Employer and Association

This dispute centers around two issues -- wages and insurance. While they are separate issues, each impact upon the monetary framework of the Employer. As part of the arbitration, the economic issues were paramount, and they have created significant acrimony. The insurance issue was equally important. During the hearing, each party was given ample time to present evidence and testimony regarding their respective position. At the end of the session each party elected to present a closing statement.

Given the history of negotiations, the parties have experience with comparability. The Association and the Employer used different comparability groupings. The Association presented a historical comparability grouping that was extensive including cities throughout Iowa that are considered "six above and six below" Cedar Falls. The cities included (from large to small) Waterloo, Iowa City, Council Bluffs, Dubuque, Ames, West Des Moines, Cedar Falls, Bettendorf, Mason City, Clinton, Burlington, Marion, and Marshalltown. The cities range in size from 68,000 to 26,000 with Cedar Falls in the middle at 36,000. The Employer presented a different grouping of twelve cities that ranged in size from 22,000 to 62,000 and included Bettendorf, Marion, Marshalltown, Mason City, Clinton, Burlington, Ames, Iowa City, Cedar Falls, Fort Dodge, Ottumwa, and Muscatine. The City asserted that this grouping is more representative because of the population and size of the firefighter force. Note, however that nine of the cities are in both groups. In addition, the City raised another approach to comparability -- an internal grouping that compares the firefighters to other union employees -- Police, Parks and Public Works. Each party argues that

its grouping was most appropriate and reasonable. Among the strategic factors for a neutral to consider in making an award is the comparability group. The weight given by the arbitrator is a function of several factors, which include, but are not limited to: geographical proximity, size of population, demographic characteristics, and other relevant financial data. Therefore, it is not necessary to adopt in its entirety either party's group as most appropriate. However, appropriate weight has been given to each grouping. Before noting the comparability group, it should be clear that the parties spent considerable time detailing the reasons for using its comparability group. This was not lost on the Arbitrator. While each used different groupings, many of the cities overlap each comparability group, and the Arbitrator will consider the common cities, although he will give weight to the historical grouping. With respect to the internal comparison, it is also clear that other arbitrators have reviewed this phenomenon, and while the instant arbitrator has not usually used internal comparability (given the difference in work activities), it is relevant in this arbitration.

Another strategic factor to consider is bargaining history. The parties detailed the history, and each focused upon the bargaining during the course that led to the arbitration. The City contested the inclusion of the Association's exhibit 5, Wage Agreement Timeline. The arbitrator noted the objection and reserved his decision. While it is clear that this material details the wage issue, the arbitrator does not believe it is strategic to exclude this information, as arbitrators have the broad latitude to admit evidence. The information and chronology reflect the Association's view of the events, and the Employer was given the opportunity to rebut the data. The key issue in this instance is whether a tentative agreement (TA) on salary was reached. Obviously

there is disagreement, and the arbitrator finds that a TA was not reached as there was not a meeting of the minds. Accordingly, the Arbitrator will weigh the data and determine if this has any effect on the award. In this case the Arbitrator holds that the evidence is admissible.

The other clear issue in this case is ability to pay. While the Employer does not argue an inability to pay, it clearly asserts a relative inability to pay. The Association argues that there are funds available, although it also indicated that there is a significant disagreement in how the funds are allocated. Both parties identified strategic points, but in the end the Arbitrator found this is not an inability to pay issue. The Association presented considerable financial data which demonstrated that the Employer has ability to pay either proposal. The Employer did not directly refute this information. Rather the Employer relied upon the comparability both internally and externally.

In analyzing the issues, the Arbitrator will begin with the insurance issue. The Employer contends there is a need to change the insurance approach to a percentage increase, which covers the costs of insurance. The employer notes that there is internal comparability (Police, Parks, and Public Works). The fact-finder was not moved by the City's arguments -- cost, internal comparability, or external comparability. The Arbitrator is reluctant to change the insurance based upon similar analysis as the fact-finder. The Arbitrator recognizes that the Police and Parks/Public Works groups negotiated their settlements while the Firefighter Union did not. Obviously insurance is a cost, but the history of negotiations indicates that the Firefighters have not agreed to pay increased costs by a percentage method and have raised the costs by a dollar amount that was negotiated with each contract. While this seems insignificant, other arbitrators have

recognized that an agreement is to be construed as a whole (Riley Stoker Corporation 7 LA 764-767) and that specific language was included for a purpose. Changing to a percentage approach locks in an increase every year and the total contribution by the employee will increase each year. The amount of the instant increase, from \$24.32 to \$57.60 is significant, and the data from the insurance consultant does not appear to reflect the suggested increase. As articulated by the fact-finder, the core issue is one of appearance -- since other Associations within the City have already agreed to the percentage increase, it appears that the Employer must be consistent by not entering into different agreements with the Firefighters. The Arbitrator does not find that external comparability is sufficient to mandate a change. The internal comparability asserted by the Employer includes an inconsistency between the Park/Public Works and Police in the percentage negotiated. When this is coupled with the assertion that Police and Firefighters are similar, the bargaining history of all groups is not included. The Arbitrator, therefore, is unable to compare the trade-offs each group made and to judge comparable worth. In this regard the Arbitrator finds that there should be no change in coverage or premiums from the current contract -- the same as the Factfinders's recommendation.

The second issue is wages; however, it is not as straight forward as the insurance issue. Within the frame of wages is a set of issues related to part-time firefighters and the respective payment due them as well as the full-time firefighters. This issue, like the insurance issue, is fraught with acrimony. The Association asserts that a tentative agreement (hereinafter TA) was reached on this matter, but the Employer disagrees. The Arbitrator finds that a TA did not occur, although the Factfinder did not consider wages

or make a recommendation related to wages because the parties agreed to not submit the issue. This suggests a TA, but the Employer noted that the City Council did not ratify the agreement and that the Association was duly notified. Regardless, the Association relied upon the "TA" and argues that it should be considered in the process. The Arbitrator has noted this and will consider it.

The second aspect of this issue is related to the inclusion/exclusion of volunteer firefighters (specifically including the positions labeled "Volunteer Coordinator Station Commander, Volunteer Firefighter, Reserve Firefighter, and any other classification receiving compensation that requires a firefighter certification that is not excluded by Iowa Code section 20.4) into the existing bargaining unit. The Unit asserted that the volunteer employees should be included in the association while the Employer called for their exclusion.

The Public Employment Relations Board (Hereinafter PERB) heard this case and ruled that the bargaining unit includes "all employees of the City of Cedar Falls ... including those in the classifications of firefighter, Lieutenant, Minimum Rental Housing Inspector, and Part-time Firefighter." PERB clarified that the Fire Chief, Division Commanders, Shift Station Commanders, Training Coordinator Station Commander, Secretary and all other excluded by Iowa Code Section 20.4 were excluded. In the Conclusions of Law, PERB hearing officer Bolte noted the Employer's argument that the Association demonstrated a bias against part-time firefighters while the Firefighters indicated they have not been in favor of the part-time program but have been for the people. This established the frame for this case -- the Employer argues that the Firefighters will not be fair in dealing with the part-time employees and that it is apparent

in the wage proposal that rewards full-time employees and reduces pay for part-time employees. Note also that the Employer appealed the ruling by Bolte and the PERB board upheld the ruling. Further the employer has petitioned that PERB stay its decision. PERB declined to stay the decision. The stay also included a petition for judicial review by the Iowa District Court for Black Hawk County. The concern behind the Employer's actions is that a decision by the arbitrator against the Employer would result in the demise of the part-time fire-fighter program, which would not be in the interests of the community. While PERB recognized the concerns, the Board did not stay the rulings and the case has proceeded to the instant arbitration.

Besides the preceding factual materials, the Arbitrator was also presented with an array of data related to comparability. Again the Employer was consistent and presented both internal and external comparability. Costing does not appear to be an issue, as the parties agree on baseline costs. The Employer indicated that a pay raise of 2.80% without an insurance increase amount to the same settlement that other internal groups have negotiated (3.5%). The Employer also indicates that the Cedar Falls Firefighters rank well in wages when comparing hourly rates over 4 years, 8 years, and maximum. Moreover, the Employer notes that firefighters in Cedar Falls rise through the schedule faster than those in the comp group. Note, however, that these rankings are better when comparing the Employer's group as opposed to a mixed comparability group.

The Association counters that there is a long-term issue with respect to wages. They asserts that the firefighters are underpaid for a majority of their career (2 to 5%), and that they employees lose approximately \$30,000 over their career compared to other firefighters in the comparability group. In addition, the Association argues that the

Employer has refused to establish supplemental pay for EMT-B employees and that this further erodes the pay.

The preceding details the numbers, but does not detail the whole story. The Association also asserts that the Employer's proposal fails to follow the PERB ruling that recognizes one classification of part-time firefighters. In addition, the Association argues that the Employer's proposal to part-time firefighters will violate minimum wage laws as they will earn less than \$4.00 per hour. The Employer counters by arguing that the PERB decision does not prohibit classifications within the part-time firefighter positions, and that this is the Association's attempt to destroy the approach used by the Employer to reduce overtime.

In reviewing the facts of this case, the key is the comparability groups. Each party brings different groups to the table, which reinforces their paradigm. The Arbitrator has given weight to the Association's grouping, which they have characterized as the "historical" group as evidenced by various fact-findings and arbitrations. The Employer has a slightly different group, which places the firefighters in a different light. While many cities overlap, it is the arbitrator's decision and in case the selection was made to utilize the Association's grouping. While the Arbitrator gives more weight to the Association group, the Employer group and a mixed group were considered. In this context the Arbitrator recognizes the impact over time on the firefighters. It is also obvious that the Employer articulated clearly that these groups have different expectations, and that each sees the circumstances differently. Given that there is not an inability to pay and the comparability externally with the historical grouping (which was not contested by the Employer), the Arbitrator awards the Association proposal -- 1%

from steps A, B, C, and D with the remainder of funds available from pool equivalent to 3.5% across the board for full-time firefighters, lieutenants, and part-time inspector. (This is calculated at a 4.95% increase) Other pay is as follows: Lieutenant: 3.0% across the board; Part-time inspector: 1%, and Part-time Firefighters: \$7.97 per hour. The Arbitrator finds that the Association wage increase is more reasonable than the Employers. While the Arbitrator has reservations about the payment of part-time firefighters, it is clear that these concerns will not end with the current award. Moreover, the PERB decisions appear to reinforce the Association's actions.

AWARD
(Summary)

Wages

Union position -- Firefighters: 1% increase for Steps A, B, C, d
Step E would get the remainder of funds available
from a pool equivalent to 3.5% which is
calculated at 4.95%.

Lieutenant: 3.0% across the board

Part-time Inspector: 1% increase

Part-time Firefighters: \$7.97 per hour to be paid bi-weekly to
all classified as Part-time firefighters by PERB ruling case 7235

Insurance

Fact-finder recommendation – no change in insurance.

Dated and signed by:

Micheal L. Thompson, Arbitrator

Certificate of Service

I certify that on the 17th day of April, 2007 I served the foregoing Arbitration Award upon each of the parties to this matter by mailing a copy to them at their respective addresses as shown below:

Susan Bernau Staudt, Assistant City Attorney
City Hall
220 Clay Street
Cedar Falls, Iowa 50613

Scott Dix, President
Cedar Falls Firefighters Association Local 1366
1215 W. First Street
Cedar Falls, Iowa 50613

I further certify that on the 17th day of April, 2007, I will submit this report for filing by mailing it to the Iowa Public Employment Relations Board, 510 East 12th Street, Suite 1B, Des Moines, Iowa 50319.